

Citation: *R. v. Radatzke*, 2016 YKTC 16

Date: 20160415
Docket: 14-00787B
15-00833
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

LUCAS JAMES RADATZKE

Appearances:
Eric Marcoux
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] LUTHER J. (Oral): This offender was involved in the dial-a-dope operation back in 2014 and has pleaded guilty to:

COUNT #1: On or between May 22, 2014 to March 16, 2015, at or near Whitehorse in the Yukon Territory, did traffic in a substance included in Schedule I, to wit: cocaine contrary to Section 5(1) of the *Controlled Drugs and Substances Act*;

[2] The Crown characterized him as a mid-range player in the operation. Between May and October 2014, he was directly involved in drug sales ranging from \$50 to \$2,500.

[3] After being released by this Court on judicial interim release with a comprehensive recognizance and \$10,000 cash, he fled the jurisdiction and was picked up in Edmonton on a bus from Vancouver.

[4] Mr. Radatzke had 446 grams of marijuana which the police and Crown accepted as for personal use. It is easier to buy in British Columbia than Alberta. The drug and breach of recognizance charges were transferred here.

[5] The joint submission was for a global sentence of 18 months' imprisonment with nine and one half months' credit for time in custody before today.

[6] I am satisfied that this offender was not a part of a B.C. gang. He was addicted to cocaine.

[7] Exhibit 1 consists of a three-page handwritten letter from the offender to me. It also consists of several letters from family and friends, some documentation from Okanogan College, and a number of certificates involving anger management from Gospel Echoes Team. I think there were two from them with another, a course On The Right Track. This goes back to what I said in a number of these other cases. Quite often, the people involved in drug trafficking make the best prisoners in the Whitehorse Correction Centre because they do not have a lengthy history of other criminogenic factors.

[8] Clearly, trafficking drugs is a very serious criminal enterprise for which people need to be punished. A lot of the other people we see with crimes of violence, spousal abuse, break and entries, arsons, and offences like that. Those people may have a

lifetime history of various forms of abuse and issues dealing with addictions. We do not see that with a lot of the drug offenders. I just say that as a generalization. It is not universally true. It is something that I have observed over the years. Consequently, the drug offenders generally do well and they have a goal that they want to be released as quickly as they can and move on with their lives in a positive way. Many make the change. Unfortunately, some of them have the goal to get out and then, within a short period of time, they are involved again in illegal drug trafficking.

[9] In the case of Mr. Radatzke, things are looking good at the moment. He has embarked on what I believe is a sincere spiritual quest. He has asked in his letter (at page 3) for me to forgive him of his sins. That is not my function here today. That is, of course, clearly left to God.

[10] My function is to make sure that I impose a fair and just sentence, according to the principles in the *Criminal Code* found generally around s. 718. I have gone over these in some detail in all these other drug offences that I have dealt with very recently.

[11] First and foremost for drug trafficking, we have to denounce it. That is first and foremost.

[12] Secondly, we have to make sure that this person and others are seriously discouraged from committing the offence of trafficking in drugs. This is what we call specific and general deterrence.

[13] We have to separate offenders from society, where necessary. It is clearly necessary to separate these types of drug offenders from society because they have

taken a calculated risk. They have, for whatever reason, whether it is to pay for their own drug habit or out of greed, chosen to prey upon the miseries of others. They have elected to carry on this nefarious business of drug trafficking. For that there is a penalty, a loss of freedom.

[14] On the other hand, we want to assist in rehabilitating the offenders insofar as we can, but that is a secondary purpose and a fair bit down the line in terms of a priority that a trial judge would have in sentencing drug traffickers.

[15] In addition to the heartfelt and sincere letter that Mr. Radatzke wrote to me, we have some very influential letters from a number of family members and friends, particularly his mother. She has written a realistic letter indicating that (probably any mother is going to write a strong letter in support of her son) she basically calls it as she sees it. Like Mr. Marcoux said, she has stayed in touch with the Crown's office and she is seriously interested in her son and his future.

[16] There seems to be no shortage of support in terms of him getting work in the B.C. area.

[17] In terms of the college, the Okanogan College, what I have here is a letter dated April 1, 2016, a recent letter, and it shows that he is on the list but he has not been officially accepted at this point. The odds are that he may get accepted in the near future.

[18] The pattern of sentencing in the Yukon has been established through the Court of Appeal, the Supreme Court, but mostly the Territorial Court, in the sense that we do

most of these cases. What has been suggested by the Crown and defence as a joint submission, I have to analyze and make sure that it fits into that pattern. With any joint submission, I have to make sure that it does not bring the administration of justice into disrepute nor is it an unfit sentence.

[19] Given the scope of this dial-a-dope operation, it might be said that the sentences are somewhat on the light side; however, it is not up to me to go beyond the joint submission unless I am satisfied that it brings the administration of justice into disrepute or that it is an unfit sentence.

[20] Here, I cannot conclude that that is the case. Therefore, the Court accepts the joint submission. As to the way that it is going to be broken down, I do not agree that the sentences should run concurrently. Therefore:

- on the drug charge from the Yukon, the sentence will be fixed at 14 months less nine and one half months' credit for time served;
 - on the drug charge from Alberta, there will be a sentence of three months consecutive; and
 - on the breach charge from Alberta, there will be one month consecutive
- for a total of 18 months less the nine and one half months' credit.

[21] The Court has no problem with the suggestion by the defence that the quantity of drugs purchased in B.C., the marijuana for \$1,200, was for his personal use. He clearly

trafficked it. At the very least, he passed over a provincial border and transported the drugs. Clearly, it falls within the section as set out in the Information.

[22] There will be victim surcharges in each instance. Where the Crown has gone by indictment, the surcharges will be fixed at the amount of \$200. These are going to be paid. I am not going to make them payable forthwith, though. I will give him a period of two years to pay these surcharges.

[23] It must be remembered that these surcharges go to support worthwhile programs to assist victims of crime here in the Yukon. I am convinced, based on my discussions with people in the Court Administration and officials in the Territorial Department of Justice that these surcharges are put to good use and the victims are indeed helped. I am not prepared to wash away the \$600 order for the victim surcharge by ordering them to be paid forthwith.

[24] Mr. Radatzke, would you stand please?

[25] You have decided in the past to get involved with this drug trafficking business. I understand that there were times you were fearful. That is understood because when you play with fire, the chances are that you run a serious risk of getting burned. Not only yourself, but you put your own family into some jeopardy as well because a lot of the people involved in the drug business are very nasty uncaring individuals, totally selfish, and prepared to do whatever it takes to continue the business and satisfy their very greedy and selfish ambitions.

[26] I believe that the letter you wrote to me and the letters that others have written about you are genuine. I trust that this has not just been a wake-up call to you but it marks a major turning point in your life and that you can go forward from here and make the very best of it. You are only 31 years of age. As far as I am concerned, there is absolutely no excuse whatsoever for you not achieving the goals that you have set out for yourself and that your mother and others expect from you.

[27] That is all I have to say here. Was there anything else for the Crown?

[28] MR. MARCOUX: I forgot to mention there's a mandatory firearms prohibition for 10 years on the cocaine charge.

[29] THE COURT: That is ordered.

[30] MR. MARCOUX: Thank you.

[31] And the Crown will seek forfeiture of all items seized in both files — forfeited to the Crown.

[32] THE COURT: Forfeiture is ordered.

[33] Ms. MacDiarmid, anything else for you?

[34] MS. MACDIARMID: I don't believe so, Your Honour.

[35] THE CLERK: The outstanding charges?

[36] MR. MARCOUX: Stay of proceedings.

[37] THE COURT: Okay.

LUTHER T.C.J.